

CLERK: (Read record vote. See pages 2099-2100 of the Legislative Journal.) 41 ayes, 0 nays, 1 present and not voting, 7 excused and not voting.

SPEAKER WITHEM: LB 356 passes. LB 397.

CLERK: Mr. President, I have a motion on the desk. Senator Beutler would move to return the bill.

SPEAKER WITHEM: Senator Beutler.

SENATOR BEUTLER: Senator Withem, members of the Legislature, LB 397 if you would look on page 5, subsection 5, that is the sum and total of what I wanted to deal with momentarily on LB 397. LB 397 is the bill that allows certain kinds of loan companies to engage in the business of reverse mortgages. Situations where generally speaking the market is elderly people and those elderly people are very interested in staying in their homes and they try to work with the loan companies on programs that would, for example, maybe give them \$1,000 a month for the rest of their lives or a certain kind of annuity or it may even be an up-front payment of 30 or 40 thousand dollars. In return, then the lender collects his principal and interest at such time as the person or persons die. And so it's a market of elderly people. It's a market of very vulnerable people, frankly, and I think we should be very careful about how we structure things in this kind of a market. Subsection 5 that I'm interested in says that lenders failing to make loan advances as required in the loan documents, et cetera, shall forfeit an amount equal to the greater of \$200 or 1 percent of the amount of the loan advance the lender failed to make. That's a remedy, it's what we call a remedy in the law; and I'm not sure exactly how that works. I think there are a couple of ambiguities in the language itself. But the thing that I'm concerned about is that this is not perceived or interpreted by the courts to be an exclusive remedy. That is, I think it's very important in this area, for example, that the remedy of enforcement of the contract, specific performance is what they call it, would also be an available remedy. That is, that elderly people should not have to worry about the loan companies following through with these contracts. And so oftentimes in these situations we put in some standard language that says that this remedy is supplemental and not intended to be an exclusive remedy. It's my understanding, from talking to the folks who are interested in this bill outside the Legislature, that it's not intended to be an